



Aboriginal and Torres Strait
Islander Health Practice
Chinese Medicine
Chiropractic
Dental
Medical
Medical Radiation Practice
Nursing and Midwifery
Occupational Therapy
Optometry
Osteopathy
Pharmacy
Physiotherapy
Podiatry
Psychology

Australian Health Practitioner Regulation Agency

Response template: Public consultation - revised *Guidelines for mandatory notifications*

National Boards and the Australian Health Practitioner Regulation Agency (AHPRA) are seeking feedback about the revised *Guidelines for mandatory notifications*.

This response template is an alternative to providing your response through the online platform available on the consultation [website](#).

IMPORTANT INFORMATION

Privacy

Your response will be anonymous unless you choose to provide your name and/or the name of your organisation.

The information collected will be used by AHPRA to evaluate the revised guidelines. The information will be handled in accordance with AHPRA's privacy policy available [here](#).

Publication of responses

Published responses will include the name (if provided) of the individual and/or the organisation that made the response.

You must let us know if you do **not** want us to publish your response.

Please see the [public consultation papers](#) for more information about publication of responses.

Submitting your response

Please send your response to: AHPRA.consultation@ahpra.gov.au

Please use the subject line: Feedback on guidelines for mandatory notifications

Responses are due by: **6 November 2019**

Public consultation questions

Please ensure you have read the [public consultation papers](#) before providing feedback as the questions are specific to the revised Guidelines for mandatory notifications.

Use the corresponding text boxes to provide your responses. You do not need to answer every question if you have no comment.

1. How easy is it to find specific information in the revised guidelines
The table of contents make finding specific information relatively easy.
2. How relevant is the content of the revised guidelines?
<p>The content is relevant, however the conflict with the requirements for practitioners whose principle place of practice is Western Australia does, we believe, create an element of confusion and unnecessary detail.</p> <p>Guild questions whether these guidelines should clearly state that they do not apply to Western Australian practitioners and that separate (albeit very similar) guidelines should be created for Western Australian practitioners to streamline the guidelines and remove the potential for confusion. This is not dissimilar to the approach taken with the student guidelines.</p>
3. Please describe any content that needs to be changed or deleted in the revised guidelines.
<p>Guild appreciates the significant amount of work done by the Department to provide greater clarity.</p> <p>Guild works closely with peak bodies for allied health professions as well as their members. We assist them with regulatory requirements and obligations daily and believe we are well placed to provide feedback on how best to deliver communication in a way it will be best consumed and understood by health professionals.</p> <p>In this context, Guild has made suggestions that we believe will improve the usability of the document and provide greater clarity for practitioners on certain points (particularly around the concept of a substantial risk).</p> <p>We believe that there remains some ambiguity around exemptions for mandatory reporting, particularly around 1.5 on page 7, as they relate to s141(4) of the National Law. Please see our response to question 6 in this regard.</p>

4. Should some of the content be moved out of the revised guidelines to be published on the website instead?

If yes, please describe what should be moved and your reasons why.

There is always an option to create a high-level document as a “ready reckoner” that prompts and guides a practitioner to do further reading on line where they are, for example, concerned about the risk of harm to the public. Indeed, they are more likely to refer to a brief document, that may prompt further reading, consideration and reflection, than a comprehensive guideline document.

Ultimately though Guild has no preference.

5. How helpful is the structure of the revised guidelines?

The revised guidelines are relatively easy to navigate and follow a logical and intuitive path.

6. Do the revised guidelines clearly explain when a mandatory notification is required and when it is not?

Please explain your answer.

Guild believes that the revised guidelines could be clearer regarding exemptions to Mandatory Reporting requirements and the threshold issue of a “Substantial Risk”. Please see our response to Question 8 on the question of substantial risk.

Section 1.5 of the document is titled “What doesn’t need to be reported” and deals with circumstances where a registered practitioner is exempt from having to make a Mandatory Report. Guild believes the heading does not accurately represent this as the section deals with “who” rather than “what”. We suggest it could be changed to “Practitioners Exempt from Making a Mandatory Report” or something similar.

Guild believes that the reference to practitioners “involved in legal proceedings, (are) providing legal advice or are a member of a quality assurance body with legal confidentiality requirements” does not adequately clarify where these exemptions should apply with reference to s141(4) of the National Law.

Section 141(4)(a) is framed in such a way that both parts (i) and (ii) must be satisfied for the exemption to apply. Therefore, a practitioner employed or engaged by a Professional Indemnity insurer is only exempt if there is litigation on foot or they have a legal qualification. The reality is of course that most insurance claims do not begin with legal proceedings and the instances of practitioners having legal qualifications are rare, so this narrow construction seems to make little practical sense.

Guild made submissions on this issue during the consultation phase for changes to the National Law and were advised that clarification could be made through changes to the guidelines.

The changes to the obligations for treating practitioners were introduced to allow practitioners to seek treatment for a health condition without fear of being reported. The rationale for this change is that the fear of reporting could and likely did lead to practitioners not seeking assistance, which ultimately may lead to an increased risk of harm to the public.

Many of the Health Professional Associations engage professional officers to provide both clinical and professional advice to their members. In the case of Guild and, we believe, other insurers, this also forms part of the claim reporting process. This service is utilised by members either at the time of an adverse event or where a course of treatment is headed towards an adverse outcome. The professional officers provide coaching, guidance and support to members that either mitigate the potential for an adverse outcome on a relevant case, or where there has already been an adverse outcome, promote changes in clinical practice to mitigate the likelihood of a recurrence.

Guild's concern is that if their members become aware of the possibility they will be mandatorily reported to their regulator, they will be reluctant to reach out for help and assistance from their professional association, creating a greater likelihood of harm to the public.

We believe for the same reasons exemptions were created for treating practitioners, the guidelines could provide clarity to ensure health practitioners can seek help when needed from their professional body and/or professional indemnity insurer.

Guild made submissions that the National Law could be changed to reflect this, which we believe were consistent with the intent, which were not adopted. Guild believes the guidelines could include a clarification that will overcome this issue, without offending the underlying Act. Please see below.

Treating and non-treating practitioners do not have to make mandatory notifications if they:

- *are involved in ~~legal proceedings~~ a Professional Indemnity claim, are providing legal advice or are a member of a quality assurance body with legal confidentiality requirements, or...*

Ideally, we would prefer to substitute the term *legal* with "peer" or "professional peer", though we appreciate this may stray too far from the underlying Act.

Guild also believes that "a quality assurance body" without an explanation of what that is, is unlikely to resonate with practitioners and may cause confusion. There may be benefit in defining a quality assurance body in the circumstances.

7. Are the flow charts and diagrams helpful?

Please explain your answer.

The flowcharts are helpful, and Guild has provided detailed feedback in relation to the risk charts in response to question 8.

8. Are the risk factor consideration charts helpful?

Please explain your answer.

Guild believes the risk factor charts are a positive improvement, but we believe there is potential to provide additional clarity on when to make a mandatory notification with existing best practice risk assessment frameworks.

In our experience, registered health professionals take a very black and white scientific approach to any assessment (which is how they approach their clinical practice, for example in reaching a diagnosis). We believe that the suggested charts will likely create ambiguity as they are not definitive about when a risk crosses over from not substantial to substantial.

It is widely accepted that any assessment of risk needs to consider the potential impacts of a risk eventuating as well as the likelihood of the risk eventuating. For this reason, Guild believes that a simplified overarching quadrant style risk matrix could be provided that would simplify the considerations that a practitioner should consider before a mandatory report. An example of what this could be is below.

Impact of potential Harm to the Public

		Minor	Moderate	Severe
Likelihood of Harm to the Public occurring	Likely	Some Risk	Substantial Risk	Substantial Risk
	Possible	Some Risk	Some Risk	Substantial Risk
	Unlikely	Low Risk	Some Risk	Some Risk

A Question that does arise from this is what a practitioner should do where some risk exists, but it is not a substantial risk. AHRPA seems to have made it clear that the mandatory reporting requirement has a high threshold, but that registrants are encouraged to make voluntary notifications in some circumstances.

Perhaps there is a role for the risk factor consideration charts to assist practitioners with when to make voluntary notifications where the risk matrix points to some risk, but that risk is not classified as substantial.

9. Are the examples in the revised guidelines helpful?

Please explain your answer.

Guild considers the examples helpful in setting some high level “guidrails” around what are and what aren’t reportable situations. They are however quite specific in circumstances where the actual circumstances could be almost endless. As stated in response to Question 8, registered health professionals take a very black and white scientific approach to any assessment. Specific examples may not be of value for any other unique circumstance.

If examples are retained in the guidelines, Guild believes that a specific example that deals with different clinical decision making or treatment approaches, as we have encountered mandatory reports based on a difference of opinion.

10. Should there be separate guidelines for mandatory notifications about students or should the information be included in guidelines about practitioners and students (but as a separate section)?

Please explain your answer.

For the same reason we believe there should be separate guidelines for Western Australian practitioners, Guild believes there should be separate guidelines for students.

The revised guidelines explain that it is not an offence to fail to make a mandatory notification when required, but a National Board may take disciplinary action in this situation.

11. Is this made clear in the revised guidelines?

Please explain your answer.

Guild believes it is made clear.

12. Is there anything that needs to be added to the revised guidelines?

No.

13. It is proposed that the guidelines will be reviewed every five years, or earlier if required.

Is this reasonable?

Please explain your answer.

Guild believes this timeframe is reasonable.

14. Please describe anything else the National Boards should consider in the review of the guidelines.

N/A

15. Please add any other comments or suggestions for the revised guidelines.

N/A

Thank you!

Thank you for participating in the consultation.

Your answers will be used by the National Boards and AHPRA to improve the Guidelines for mandatory notifications.